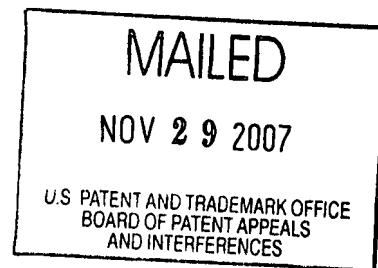


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte: THADDEUS GABARA AND LAWRENCE RIGGE

Application No. 10/668,544

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on November 19, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

Grounds of Rejection to be Reviewed on Appeal

Appellant filed an Appeal Brief dated August 17, 2006. In the "Grounds of Rejection to be Reviewed on Appeal" section of the brief a statement of each grounds of rejection was listed however, appellant did not include the Cervello (2002/0060995) reference in the following statement of rejection:

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Karaoguz
in further view of U.S. Publication No. 2003/0017858 ("Kraft").

It is noted that the examiner rejected claim 7 under 35 U.S.C 103(a) as being unpatentable

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over U.S. Pub. No. 2002/0060995, **Cervello** et al., in view of U.S. Pub. No. 2004/0203889, Karaoguz and further in view of U.S. Pub. No. 2003/0017858, Kraft et al. Appropriate correction is required.

EXAMINER'S ANSWER

On January 3, 2007, an Examiner's Answer was mailed in response to an Appeal Brief received August 17, 2006. Accordingly, the Examiner's Answer does not contain the "Real Party in Interest" heading as required by 37 CFR § 41.39.

Evidence Relied Upon

The Evidence Relied Upon section of the Examiner's Answer mailed January 3, 2007, is defective. The Examiner relied upon the Ramaswamy, Kinnunen and Pogrebinsky references in the statement of the grounds of rejections and must be included in the "Evidence Relied Upon" section.

In accordance with MPEP § 1207.02, the "Evidence Relied Upon" should include:

A listing of the ****>evidence<** relied on **>(e.g., patents, publications, admitted prior art)<**, and, in the case of nonpatent references, the relevant page or pages.

It should be noted that the statement of rejection on page 4 of the Examiner's Answer should be corrected to include claims 1-5, 8 and 17-20.

Correction is required.

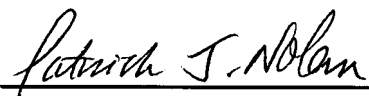
CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed August 17, 2006, defective;
- 2) notify the appellant to submit a "paper" which corrects the Appeal Brief, Grounds of Rejection to be Reviewed on Appeal;
- 3) acknowledgement and consideration of any "paper" that may be submitted by Appellant in response to the Notice of Non-Compliance to correct the Appeal Brief as required by 37 § 41.37(c)(1)(v); and
- 4) issue and mail a PTOL-90 corrected both the Real Party in Interest and Evidence Relied Upon section; and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

PJN/tsj

cc: Ryan, Mason & Lewis, LLP
90 Forest Avenue
Locoust Valley, NY 11560